

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**DON S. MCAULIFFE,**  
  
**Petitioner,**

**CASE NO. 2:08-cv-618  
CRIM. NO. 2:03-cr-00070  
JUDGE MARBLEY  
MAGISTRATE JUDGE KEMP**

**v.**

**UNITED STATES OF AMERICA,**  
  
**Respondent.**

**ORDER**

On February 23, 2009, this Court denied petitioner's motion for release on bail and for summary judgment. Doc. No. 182. Petitioner has filed a request for reconsideration of the denial of his motion for summary judgment. Doc. No. 183. Petitioner again requests summary judgment in his favor based upon respondent's "knowing election to file a limited answer" and failure to respond to petitioner's motion or supplemental motion for summary judgment in this case. Petitioner again contends that respondent has conceded that at least portions of petitioner's constitutional claims are meritorious and therefore requests reconsideration of this Court's denial of his request for summary judgment in regard to "all conceded... or uncontested allegations of facts and unchallenged statements of law." *See Motion for Reconsideration.*

The Court first notes that Respondent has not filed a memorandum in opposition to the motion for reconsideration. Even though, as discussed below, the motion lacks

merit, it would be helpful to the Court were Respondent to file a memorandum stating its position with respect to motions filed by the Petitioner. This is not the first motion filed in connection with the motion to vacate to which no response has been made.

That having been said, the record reflects that the United States has filed a return of writ in which it asserts that "Defendant's contentions are without merit and should properly be denied by this Court and ... Defendant is not entitled to an evidentiary hearing." Return of Writ, at 1. Thus, the United States does not appear to concede that any of the claims in the petition are meritorious. Further, as the Court noted in its prior order denying Petitioner's summary judgment motion, the failure of the United States specifically to address each and every argument made in a §2255 petition does not require the Court to grant relief to the Petitioner. The Court must still determine for itself whether any meritorious claims have been raised. *Cf. Ruff v. Jackson*, 2005 WL 1652607 (S.D. Ohio June 29, 2005) (Report and Recommendation), *adopted by Ruff v. Jackson*, 2005 WL 1719112 (S.D. Ohio July 22, 2005). The Court will make that determination when it reaches the merits of the case.

For these reasons, Petitioner's motion for reconsideration, Doc. No. 183, is  
**DENIED.**

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Algenon L. Marbley', is written over a horizontal line.

ALGENON L. MARBLEY  
United States District Judge